(b) the accident took place at a busy roundabout;

(c) the main cause of the accident was the temporary lapse of attention by the respondent coupled with his eagerness to stay clear of traffic coming from the right.

It seems clear that none of the facts taken into consideration by the learned Magistrate could constitute a special reason in law. The fact that the respondents were first offenders or had been driving for years with a clean record, or that they were holders of provisional driving licence were facts of general character, and, even if they were of special character, they were merely special to the respondents and not facts special to the offence. Similarly, there was nothing special in the fact that respondent Muhammad Situl had committed an error of judgment when he overtook the other vehicle. Nor was there anything special in respondent Chew Ah Bah's temporary lapse of attention when he collided into the rear of another vehicle at a busy roundabout. Although an error of judgment or temporary lapse of attention had reference to the offence with which the respondents were charged, they were generally the most common cause of traffic accidents and they usually formed the basis for the offence of driving without due care and attention and, as such, they could not constitute special reasons within the meaning of section 36(2) Road Traffic Ordinance. In the circumstances, I allowed the appeals and ordered the driving licence of both respondents to be endorsed.

Appeals allowed.

CHAN MUN POY v. DIRECTOR-GENERAL OF TELECOMMUNICATIONS & ANOR.

[O.C.J. (Wan Suleiman F.J.) January 24, 1981]
[Kuala Lumpur — Originating Motion No. 21 of 1979]

Practice and Procedure — Mandamus — Leave of court necessary — Application for specific performance against public servant — Mandamus inapplicable — Rules of the High Court, 1980, O. 53 r. 1(1) — Specific Relief Act, 1950, ss. 44 to 49.

Telecommunications — Breach of contract alleged — Application for specific performance — Mandamus inapplicable to enforce civil liability — Specific Relief Act, s. 44 — Telephone Regulations 1956, r. 11.

The applicant in the present case sought an order of mandamus under Specific Relief Act 1950, section 44 against the defendants to reinstal both the telephone line and the telephone at No. 42 Jalan Bawang, Kuala Lumpur. The applicant alleged that the respondents' servant or agent had wrongfully disconnected the telephone line and telephone on July 14, 1978, alleging that the applicant had installed an illegal extension, which the latter denied.

The applicant's requests, followed by those from his solicitor, for reinstallation had been ignored.

The respondents applied to have the application struck out on the ground that it was wrong in law. They objected on the ground that the applicant should have first obtained leave of the court before an order for mandamus could be sought.

Held: (1) since June 1, 1980, after the coming into force of the Rules of the High Court 1980, leave of court would be required under Order 53 rule 1(1) before an order for mandamus could be sought;

(2) the applicant in this case had not succeeded in bringing his case under section 44 of the Specific Relief Act, 1950. His relationship with the respondents was merely contractual under an agreement made in accordance with Rule 11 of the Telephone Regulations 1956. If what he alleged was true, he would have his remedy in an action for breach of contract, and therefore not be able to assert that he had "no other specific and adequate legal remedy," a condition necessary to entitle a person to apply for relief under section 44(1) of the said Act;

(3) mandamus does not lie to enforce a civil liability arising out of a breach of contract to enforce rights based on contract.

Case referred to:-

(1) *Koon Hoi Chow* v. *Pretam Singh* [1972] 1 M.L.J. 180.

ORIGINATING MOTION.

N.F. Cheong (*Miss*) for the applicant.

Stanley Isaacs (Federal Counsel) (*Tee Ah Seng*, Federal Counsel with him) for the respondents.

Cur. Adv. Vult.

Wan Suleiman F.J.: Chan Mun Poy @ Chan Kai New the applicant by way of originating motion had moved for an order pursuant to section 44 of the Specific Relief Act 1950 commanding respondents to reinstal both the telephone line and the telephone at No. 42, Jalan Bawang, Taman Cheras, Kuala Lumpur.

In the supporting affidavit, he deposed that he was a subscriber of telephone No. 613619 which had been installed at the address mentioned above. On July 14, 1978 he said the respondents' servant or agent had wrongfully disconnected the telephone line and telephone, alleging that applicant had installed an illegal extension, an allegation which he denies. In support he attached to his affidavit copy of a letter from one of respondents' servants or agents who had removed the telephone the same day, which said that applicant had not used the Illegal Parallel Extension (whatever that might mean). Applicant's requests, followed by those from his solicitors, for reinstallation had been ignored.

Encik Stanley Isaacs, Federal Counsel appearing for respondents responded by filing a notice of motion dated April 2, 1979, applying to have the application struck out on the ground that it is *inter alia* wrong in law.

Firstly he submitted that under Order 59 rule 3 of the English Rules of the Supreme Court 1957 read together with Order 53 rule 1 of the Rules of the High Court 1957 leave of the court should be obtained before an order for *mandamus* could be sought. Since an application for an order under section 44 of the Specific Relief Act 1950 is in the nature of a *mandamus*, then applicant should first obtain leave of the court.

It seems to me that an application for an order of *mandamus* then would come under sections 44 to 49 of the Act, and what counsel had said applies only to an application made in Malacca and Penang (see *Mallal's* Rules of the Supreme Court page 724) so that the requirement of leave would not apply. But

since June 1, 1980, after the coming into force of the Rules of the High Court 1980, leave would indeed be required under Order 53 rule 1(1).

I am however inclined to the view that Chan has not succeeded in bringing his case under section 44 of the Specific Relief Act 1950. His relationship with the Telecommunication Department is merely contractual, under an agreement made in accordance with rule 11 of the Telephone Regulations 1956 (L.N. 178 dated June 12, 1956). Apart from anything else he would, if what he alleges is true, have his remedy in an action for breach of contract, and would therefore not be able to assert that he has "no other specific and adequate legal remedy", a condition necessary to entitle a person to apply for relief under section 44(1) of the Act.

I would with respect adopt what Sharma J. said, on somewhat similar facts in *Koon Hoi Chow* v. *Pretam Singh*,[1] that

"any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant, cannot be enforced by machinery of a writ of mandamus or an order under section 44 of the Specific Relief Ordinance. Mandamus does not lie to enforce a civil liability arising out of a breach of contract to enforce rights based on contract. A civil suit for damages or for the enforcement of the civil liability may be the only proper remedy in such a case."

The application in the originating motion of March 9, 1979 is therefore dismissed with costs.

Order accordingly.

Solicitors: *Mah-Kok & Din.*

BRUNEI REPORT

MANHATTAN BORNEO FINANCE & TRUST CORPN. LTD. v. IVAN LEONG ON KHONG

[O.C.J. (Silke J.) September 23, 1980]

[Brunei — Civil Suit No. 125 of 1980]

Practice and Procedure — Summary judgment — Whether "chattel" applies to share certificate — Meaning of "possession" — Brunei High Court Civil Procedure Rules 1970, O. 3 r. 5(3) & O. 14 r. 1.

The points at issue in this case were whether or not the word "chattel" in Order 3 rule 5(3) of the Brunei High Court Civil Procedure Rules 1970 could apply to a share certificate and whether or not "possession" meant both physical and legal possession.

Held: (1) a chattel is property, the share is property and therefore a chattel;

(2) possession in the Order included legal possession.

Cases referred to:-

(1) *Re Givan, Rees* v. *Green* [1966] 1 W.L.R. 1378.

(2) *Robinson* v. *Jenkins & Anor. Bebro Claimant* (1890) 24 Q.B.D. 275 at 278.

(3) *Sharikat Bakti & Anor. Ltd.* v. *Gurbachan Singh* [1966] 2 M.L.J. 269.

CIVIL SUIT.

T.C. Chan for the plaintiffs.

D.T. Clidero for the defendant.

Silke J. (Commissioner): Very briefly the history of the matter is that, as is well-known, the plaintiffs whom I shall call "MBF" in short, owns 51% of the shares in MAF Credit Ltd. — "MAF" for short. MBF is in liquidation.

In 1978 the defendant, to whom I shall refer as the Trustee, was given what I might term a qualifying single share in MAF by reason of his official position — as were all the other directors of MAF.

He, and they, held those shares in trust.

The original share certificate in his name, together with a signed transfer form, were both deposited with the Official Receiver in whose hands the liquidation rests.

Time passed and through some mischance which has no real relevance here the whole of the share certificate including the one in the name of the Trustee, and the signed transfer form were lost.

In the usual manner, and again I do not think I need go into this, the loss was advertised, replacement share certificates were issued and one of those certificates was, quite properly, in the name of the Trustee. The lost share certificates were cancelled and stock exchanges were informed.

Recently the possibility of an advantage sale of the shares arose. It was necessary to sell all the shares — some 15 million odd.

The Official Receiver was, as is understandable, anxious that he could make good delivery if the sale came to fruition, of the entire of the shareholding.

In parenthesis I have some doubts if the existence of one single share, held in trust, but outside the grasp